U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN-99-187-50636 Office: Nebraska Service Center Date: AUG 3 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a parish priest. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At issue in the director's decision is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on June 7, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from June 7, 1997 to June 7, 1999.

In its letter dated May 25, 1999, the petitioner stated that the beneficiary "is currently serving our congregation as Parish Priest on a temporary appointment. Prior to coming to the United States, he served as a Parish Priest in the [redacted] for 16 years." The petitioner submitted a photocopy of a self-prepared financial statement for 1998. According to this statement, the parish priest received $6,300 that year. The petitioner also submitted a letter from a representative of the [redacted] who stated that the beneficiary was a "parish priest at [redacted] starting October 1st, 1982 . . . and had functioned there until January 15th, 1998." The petitioner submitted a photocopy of the Service notice advising the beneficiary that his R-1 nonimmigrant visa was approved. The R-1 is valid from January 25, 1999 to January 25, 2002.

On September 7, 1999, the director requested that the petitioner submit additional information. In response, counsel stated that:

> During the period of January 16, 1998 until January 25, 1998 [sic] [the beneficiary] was in the United States. He was here as a visitor and did not work during this time period . . . Do the regulations really require that a minister with 17 years experience be disqualified as an immigrant minister because he took a year vacation?

On appeal, counsel states that:

> The beneficiary served continuously as a Parish Priest for seventeen years before coming to the United States for a visit . . . He retained his post in Romania during his visit . . . The statute requires "at least two years" of employment. The phrase "at least" implies that the two years is the minimum requirement of being a member of

> the denomination and for service as a minister. Apparently Congress intended the two-year experience requirement as the minimum it would accept to confer classification as an immigrant minister. But why the "immediately prior" requirement . . . I submit that the purpose of the immediately preceding requirement is to ensure that a beneficiary intends to carry on as a minister and that s/he remains qualified.

Counsel's argument is unpersuasive. 8 C.F.R. 204.5(m)(1) clearly states that the beneficiary must have continuously worked in the religious occupation for at least the two year period **immediately preceding** the filing of the petition. This regulatory requirement is not open to interpretation. The beneficiary was on vacation for over one year during the two-year qualifying period and was not working as a priest. Clearly, the beneficiary does not have the required work experience pursuant to 8 C.F.R. 204.5(m)(1).

Counsel cites Matter of M-, 1 I&N Dec. 147 (BIA 1941) to support his appellate statement. Counsel's reliance on Matter of M- is misplaced. In that decision, it was held that the rabbi was an involuntary exile from a country and rabbinate and therefore he did not voluntarily leave his position of rabbi. There is no evidence that the beneficiary was involuntarily forced not to work as a parish priest during part of the two-year period. Counsel also cites Matter of B-, 3 I&N Dec. 162 (Central Office 1948). In that decision, it was held that the rabbi had lived in a country conquered by the Nazis, then in a concentration camp, then in a camp for displaced persons and had, therefore, been unable to work as a professor during this time. It is clear that the beneficiary's case is not similar to Matter of B- in any aspect.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from June 7, 1997 to June 7, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). Also, the petitioner has failed to establish its ability to pay the proffered wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.